

*** THE HON'BLE SRI JUSTICE V.ESWARAIAH**

<+ WRIT PETITION NO. 22678 OF 2003

**% MONDAY THE TWENTY SECOND DAY OF NOVEMBER,
TWO THOUSAND AND FOUR.**

Dr. M.Sankara Reddy, M.A., M.L.I.S.C., P.hd., Potti Sreeramulu Telugu University,
Public Gardens, Hyderabad- 500004.

...Petitioner.

Versus

\$ 1. Potti Sree Ramulu Telugu University, Public Gardens, Hydrabad-500004.

2. University Grants Commission, Bahadur Shahzafar Marg, New Delhi-110001.

3. State of A.P., rep. by its Prl.Secretary Higher Education, Secretariat Bldgs,
Hyderabad.

...Respondents.

! Counsel for the Petitioner: Mr. V.JOGAIAH SARMA

^ Counsel for the Respondents: MR. D.V.SITARAMAMURTHY

< Gist:

> Head Note:

? Cases referred:

1. (1997) (8) SCC 350
2. 1998 (6) ALD 480

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE TWENTY SECOND DAY OF NOVEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION NO : 22678 of 2003

Between:

Dr.M.Sankara Reddy M.A.,M.L.I.S.C.,P.hd.,

potti sreeramulu Telugu University, Public Gardens, Hyderabad-500004

..... PETITIONER

AND

- 1 Potti Sree Ramulu Telugu University, Public Gardens, Hyderabad-50004
- 2 University Grants Commission, Bahadur Shahzafar Marg,
New Delhi-110001
- 3 State of A.P., rep.by its Prl. Secretary Higher Education,

Secretariat Bldgs, Hydrabad

.....RESPONDENTS

Petition under Article 226 of the constitution of India praying that in the circumstances stated in the Affidavit filed herein the High Court will be pleased to issue a writ or order or direction especially one in the nature of writ of Mandamus declaring that the age of Superannuation of a Librarian working in Potti Sree Ramulu Telugu University as 60 years ii) declare that there cannot be two different treatments to Librarians working in the state offending Article 14 of the constitution of India. iii) declaring that the Government is estopped from contending that the age of superannuation of a Librarian in Potti Sree Ramulu Telugu University is 58 years in view of the decision already taken in G.O.Ms.No.208 dated 29-06-1999 that the age of superannuation of a Librarian of the University is 60 years; iv) To grant such other relief or reliefs as this Honourable court may deem fit and proper in the circumstances of the case

Counsel for the Petitioner: MR.V.JOGAIAH SARMA

Counsel for the Respondent No.: MR.D.V.SITARAMAMURTHY

The Court made the following :

Heard the learned counsel appearing for both parties.

The petitioner possessed the qualification of M.A., M.L.I.S.C., & Ph.d. (Doctorate) in Library Science and Information. He was appointed as Librarian in Potti Sreeramulu University. His date of birth is 21.09.1945. He is drawing U.G.C. pay scales attached to the post of Professor in Potti Sreeramulu University. The petitioner possessed all the qualifications for the post of Librarian. Therefore, he was appointed and is holding the post of Librarian.

While admitting the writ petition, this Court in W.P.M.P. No.28388 of 2003, by order, dated 27.10.2003 ordered to maintain *status quo* and pursuant to the said order, the petitioner continued as a teacher. To vacate the said interim order, the University filed vacate stay petition in W.V.M.P. No.3552 of

2003. Learned Single judge of this Court while considering the matter elaborately and keeping in view the age of retirement under Rule 37 of the Statute No. 20 and in view of the classification of Teacher under Rule 3 of statute No.22 and in view of the decision of the Supreme Court in ***P.S.RAMAMOZHANA RAO V. A.P. AGRICULTURAL UNIVERSITY*** held that the petitioner is a Teacher and he is entitled to continue in service till he attains the age of 60 years and accordingly made the interim stay absolute, by order, dated 5.11.2003, against which the University filed W.A. No.2280 of 2003 and the Division Bench set aside the said order only on the ground that in a matter of this nature, main relief cannot be granted in the interim application.

Coming to the facts of the case, the post of Librarian comes within the definition of Teacher as defined under Section 2(h) of the Telugu University Act (Act 27 of 1985), which is extracted as under:

h) “teacher” means a Professor, Director, Senior Artist, Reader, Deputy Director, Associate Artist, Lecturer, Assistant Director, Junior Artist, and such other person giving instruction in schools or centers colleges affiliated to the University as may be declared by the statutes to be a teacher:

Rule 3 of Statute No. 22 comprises the classification of a Teacher, which is extracted as under:

“3. Classification: Teachers of the University shall comprise

a) Professors, Readers, Lecturers;

b) Directors, Dy.Directors, Asst. Directors;

c) Chief Editors, Associate Editors and Asst. Editors;

d) Librarian, Dy.Librarian; Asst. Librarian and such other persons giving instructions in Schools or Centres or Colleges and such others as may be classified as teachers from time to time by the Syndicate;”

Statute No.29 (3) reads follows:

3) “Classification: Teachers of the University shall comprise the

following classes:

- a. *Professors, Associate Professors, and Assistant Professors;*
- b. *Directors-cum-Professors, Directors, Deputy Directors and Assistant Directors;*
- c. *Librarian, Deputy Librarian and Assistant Librarian.*
- d. *Senior Assistants, Associate Artists and Junior Artists.*

The Executive Council may classify other persons giving instruction in Schools or Centres or Colleges and such others as teachers from time to time.”

It is clear from Statute Nos.22 (3) (d), 29 (3) (c) that Librarian is also a Teacher.

Rule 37 of Statute 20 of Telugu University made under Section 28 of the Act, reads as follows:

Rule 37. Retirement:

“a) Every University employee, not being a teacher and not belonging to last grade service shall retire from service on the afternoon of the last day of the month in which he attains the age of fifty eight years

b) Every University employee who is a teacher shall retire from service on the afternoon of the last day of the month in which he attains the age of sixty years

c) Every University employee belonging to last grade service shall retire from service on the last day of the month in which he attains the age of sixty years”

The learned counsel appearing for the petitioner submits that the post of a Librarian is classified as Teacher under Rule 3 of Statute No. 22 and Rule 3 of Statute No.29, which shows that Librarian is a Teacher and the retirement of a Teacher as per Rule 37(b) of Statute No.20 is 60 years.

The learned counsel appearing for the 1st respondent- Potti Sreeramulu University submits that Librarian was not included in the definition of “Teacher”, as defined in Section 2(h) of Act and therefore as per Statute 22 (3) (d), 29 (3-

c) all Librarians cannot be classified as Teachers, but such of those Librarians, Assistant Librarians, giving instructions in the Schools, Centres or Colleges, alone are to be classified as Teachers.

It is not in dispute that under Section 28 of the Telugu University Act (27 of 1985) the 1st respondent University is empowered to make Statutes to cover different fields and the statutes made by the University have the force of law. The Universities are empowered to issue ordinances regulations and statutes. Statute 20 has been issued by the University in exercise of its powers under Clauses IX & XI of Section 28 read with Sub-section 2 of Section 29 of Telugu University Act (Act No.27 of 1985) in respect of qualifications, the method of appointment and determination of the terms and conditions of the persons to be employed by the University.

While exercising similar powers under Statute No.22, special Rules have been made. Under Statute No.22, the University is empowered to determine from time to time, after considering the recommendations of the Academic Council, the subjects for which Professorships, Readerships, Lecturerships or other teaching posts may be instituted. Rule 5 of Statute 22 reads as follows:

“Vacancies among the teachers of the University shall ordinarily be advertised and applications called for before making the appointments. It shall, however, be competent for the Syndicate after consulting a Selection Committee to promote a teacher of the University if they wish to be considered”.

It is also brought to my notice that the Executive Counsel made Academic service Rules under Statute No. 29. Rule No.3 of Statute No.29 reads as follows:

“(3) Classification: Teachers of the University shall comprise the following classes:

- a) Professors, Associate Professor and Assistant Professors;
- b) Directors-cum-Professors, Directors, Deputy Directors

and Assistant Editors;

c) Librarian, Deputy Librarian and Assistant Librarian;

d) Senior Assistants, Associate Artists and Junior Artists.

The Executive Council may classify other persons giving instructions in schools or Centres or Colleges and such others as teachers from time to time.”

It is also the contention of the learned counsel for the 1st respondent that such of those Librarians who are giving instructions and other Teachers alone can be treated as Teachers, but not all the Librarians, who are not taking any classes to the Courses of Library Science in the Telugu University. As there is no post of Library Science and the petitioner is not taking any classes, he is only a Librarian, not giving instructions to the students and not taking any teaching courses, the petitioner cannot be treated as a Teacher.

The definition of a teacher under Section 2(h) of Potti Sree Ramulu Telugu University Act is similar to that of a teacher in other Universities Acts in the State of Andhra Pradesh such as A.P. Universities Act, Agricultural University Act, Jawaharlal Nehru Technological University Act and University of Health Sciences Act. While dealing with a similar question, a learned Single Judge of this Court in the case of **S.S.JANARDHANA RAO V. ANDHRA UNIVERSITY AND ANOTHER** considered as to whether a Librarian working in the Andhra University is a teacher or not, and whether he is entitled to continue in service till he attains the age of 60 years, though the librarian is not at all teaching the students of Bachelor of Library Sciences in that University and held that as per the relevant Statutes, the librarian was included within the definition of a ‘Teacher’ and accordingly treated the Librarian as a Teacher. It is further held that the petitioner therein, who was working as Librarian has to be treated as a teacher for the purpose of superannuation of age. It is also held that the statute stipulated teaching assignments to the Librarian so as to cover under the penumbra of definition of teacher, the administrative authority cannot ignore the same and act contrary to the statute, by inserting a clause that the age of superannuation would be on par with the non-teaching staff. Any

administrative instructions issued by the University contrary to the statute are *ultra vires*. Accordingly, it was held that the post of the Librarian of the University falls within the category of a teacher and entitled to continue in service till he attains the age of 60 years. The said judgment was confirmed by a Division Bench of this Court in Writ Appeal No.157 of 1999, dated 18.09.2002.

The learned counsel appearing for the petitioner also relied on a judgment of the Supreme Court in the case of ***P.S.RAMAMOZHANA RAO V. A.P. AGRICULTURAL UNIVERSITY AND ANOTHER***(*Supra-1*). That case relates to a Physical Director. The contention of the University was that Physical Director does not take up any teaching subjects to the students and therefore, Physical Director is not a teacher within the meaning as defined in the different statutes of the University. It was also the contention of the University that so far as games and sports are concerned, there is no weightage of credit hours as in the case of other teachers and there are no theoretical and practical courses prescribed for the students and therefore, the Physical Directors cannot be treated as Teachers. It was disagreed by the Apex Court. It was held that Physical Director gives guidance or teaching to the students only in the evenings after regular classes are over. The University has not prescribed in writing any theoretical and practical classes for the students so far as Physical Education is concerned, but among various duties of the Physical Director, expressly or otherwise, included the duty to teach the skills of various games as well as their rules and practices. The said duties bring him clearly within the main part of the definition of a 'Teacher'.

The learned counsel appearing for the first respondent-Potti Sreeramulu Telugu University further submits that as in the case of Physical Director, the Librarian also do not take up any teaching courses to the students and therefore, the post of Librarian do not come within the classification of the non-teaching staff. I am unable to accept the said contention for the reason that different statutes enacted by the University i.e. Rule 3(d) of statute 22 and Rule 3 (c) of statute 29 of the first respondent-University, clearly classifies Librarian as a 'Teacher'. In view of Rule 3(d) of Statute 22, I am of the opinion that Librarians, Deputy Librarians, Assistant Librarians are all teachers and in addition to them, if any

other persons giving instructions in the schools, centers and colleges, may also be classified as 'Teachers' as enacted by the Syndicate of the University. A careful reading of Rule 3(d) of Statute 22 goes to show that Librarians, Deputy Librarians, Assistant Librarians and such other persons giving instructions in Schools or Centres or Colleges and such others may be classified as teachers. The Syndicate has carefully taken note of the words "such other persons" in addition to Librarian, Deputy Librarian and Assistant Librarian in Rule 3(d) of Statute 22 of the classification of Teachers. As per Rule 3 (c) of Statute No.29, Librarian, Deputy Librarian and Assistant Librarian are all classified as Teachers and nothing further has been stated with regard to other class of persons such as other persons giving instructions. Therefore, I am of the view that the University has correctly understood that Librarian is a 'Teacher' and accordingly included the post of Librarian within the classification of Teachers.

The Government issued orders in G.O.Ms.No.208, Higher Education (UE II.1) Department, dated 29.06.1999 with regard to the revision of pay scales. The said G.O. is applicable to all the Universities in the State of Andhra Pradesh. As per clause 5 of the said G.O., it is stated that as per the revised University Grants Commission Scales of Pay, 1996, which are to be extended by the Universities as per the suggestions of the Government of India and the recommendations of Five Member Committee appointed by the State Government, the Government of Andhra Pradesh has decided to extend the revised University Grants Commission Scales of Pay to the Teachers, Librarians and Physical Education Personnel in Universities and Colleges in the State, as shown in the schedule of the said order.

It is the contention of the learned counsel for the petitioner that Librarians have to be treated on par with teaching staff. As far as the non-teaching staff is concerned, different criteria has been made. As per clause 15 (3) of the Appendix attached to the said G.O., the age of retirement of Registrars, Librarians, Physical Educational Personnel, Controllers of Examinations, Finance Officers and such other University employees who are being treated on par with the teachers and whose age of superannuation was 60 years, would also continue upto 60 years.

It is stated that though there is no ambiguity or confusion to treat the Librarians

as Teachers and in fact, the petitioner is paid the scale attached to the post of Professor in the University and the post of the petitioner is on par with that of Professor of the University. He was treated as Professor by the first respondent-University. The Registrar of the 1st respondent University addressed a letter, dated 23.09.2003, to the Government for the clarification as to whether the post of a Librarian has to be treated as a teacher or not for the purpose of retirement. It is stated in the letter, dated 30.09.2003 addressed by the first respondent-University that the petitioner-Dr.M.Sankar Reddy is working as a Librarian in the first respondent-University and he will be completing the age of 58 years with effect from 30.09.2003. The Executive Council of the University at its meeting held on 16.09.2003 resolved to retire the library staff on completion of 58 years, but as per the orders of the Government in G.O.Ms.No.208, dated 29.06.1999, the age of retirement of the Librarians and such other University employees who are being treated on par with the teachers and whose age of superannuation is 60 years, shall also continue upto 60 years. In the absence of clear-cut rules regarding the age of superannuation of University Librarian, the Government is requested to clarify the matter. Therefore, the petitioner was permitted to continue as Librarian, subject to the clarification of the Government.

This apart, it is stated that pursuant to the letter, dated 23.09.2003 of the 1st respondent University, the Principal Secretary to Government, Higher Education Department, A.P. Secretariat, vide letter No.8371/U.E.I/A1/2003-3 dated 23.10.2003 informed the Registrar of Potti Sree Ramulu University that as per sub-section 23 of Section 2 of A.P. Universities Act, 1991, the Teachers appointed by the University to give instruction or guide Research in the University and constituent colleges are alone treated as teachers whose age of superannuation is 60 years. As per Potti Sreeramulu Telugu University Act, 1995, a teacher means a person giving instruction in Schools or Centres or Colleges affiliated to the University are alone treated as teachers whose age of superannuation is 60 years. Since the Librarians are not attending to teaching or guiding research, their age of superannuation is 58 years. It is further stated that as per G.O.Ms.No.35 Higher Education (U.E.I) Department, dated 16.06.2003 it was clearly mentioned that the change of designations should not result in financial commitment to Government. Accordingly, it is clarified that

the age of superannuation of Librarian working in the University is only 58 years, but not 60 years.

I have considered the rival contentions of both the parties elaborately.

I am of the opinion that the said letter as clarified by the Principal Secretary, Higher Education, A.P.Secretariat (third respondent) is contrary to Rule 3(c) of Statute 29 and Rule 3(d) of Statute No.22 of the first respondent-University and also the judgment of this Court in **S.S.JANARDHAN RAO'S (Supra-2)** as confirmed in Writ Appeal No.157 of 1999.

A Division Bench of Karnataka High Court also in W.A.No.8746 of 1996, dated 21.08.1998 held that Librarian in Bangalore University is a teacher and entitled to continue till he attains the age of 60 years.

Neither the University Grants Commission-second respondent nor the State of A.P. represented by Member Secretary-third respondent filed any counters in the writ petition.

For the aforesaid reasons and in view of the un-ambiguous classifications classified by the first respondent, treating that the Librarians fall within the classification of the Teachers, I am of the view that the post of Librarian in Potti Sree Ramulu University falls within the classification of Teacher. Undoubtedly the library staff are included within the classification of teachers, since the post of Librarian is included within the classification of Teachers. Therefore, the said clarification letter addressed by the Principal Secretary to Government to the Registrar of the University goes contrary to the Statutes of the first respondent-University. Therefore, I am of the view that the Government is estopped from contending that the age of superannuation of the Librarian is not 60 years. I am of the opinion that when once the post of Librarian is included within the classification of Teacher, the question of financial burden as stated by the Principal Secretary does not arise and the petitioner has to be treated as a Teacher on par with other teaching professionals as per their own understanding and statutes of the University. As per the directions of the University Grants Commission's Letter No.F.1-9/96 (PS) dated 08.06.1998 the Librarians should be treated as academic and non-vocational staff and accordingly the first respondent-University rightly treated the Librarians as academic and their posts were included in the Academic Service Rules. There

is no negative answer from any of the respondents to the contention that the post of Librarian is covered by the Academic Service Rules and that they are also classified as teachers.

In view of the orders of the Government in G.O.Ms.No.208, Higher Education (UE.II.I) Department, dated 29.06.1999 and in view of the classification of the Librarian as Teacher as per the statutes of the first respondent-University, I hold that the age of superannuation of the Librarian, is 60 years. Therefore, the petitioner is entitled to continue to work as Librarian till he attains the age of superannuation upto 60 years.

Accordingly, the writ petition is allowed. No order as to costs.

V.ESWARAIAH.J

22.11.2004

L.R.Copy to be marked.

Furnish c.c.in three days.

tjs/klp

To

1. A fair copy to the Hon'ble Sri Justice V.Eswaraiah (For his Lordship's kind perusal).
2. The Potti Sree Ramulu Telugu University, Public Gardens, Hyderabad-50004.
3. University Grants Commission, Bahadur Shahzafar Marg, New Delhi-110001.
4. The Principal Secretary Higher Education, State of A.P., Secretariat Buildings, Hyderabad.
5. The Under Secretary, Union of India, Ministry of Law, Justice and Company Affairs, New Delhi.
6. The Secretary A.P. Advocates Association, Library, High Court Buildings, Hyderabad.

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